

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

WILLIAM CHARLES LOONEY

Claimant

VS.

KSQ BLOWMOLDING

Respondent

AND

TRANSPORTATION INSURANCE CO.

Insurance Carrier

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Docket No. 1,003,154

ORDER

Respondent and its insurance carrier appealed the July 9, 2002 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

Judge Clark awarded claimant medical benefits for an August 10, 2001 accident. Respondent and its insurance carrier contend claimant's injuries are either a product of his imagination or from activities not related to his employment with respondent. Accordingly, respondent and its insurance carrier request the Board to reverse the preliminary hearing Order and deny claimant's request for workers compensation benefits.

The only issue before the Board on this appeal is whether claimant injured his left shoulder while working for respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and after reviewing the parties' arguments, the Board affirms the July 9, 2002 preliminary hearing Order. At this stage of the proceeding, the Board finds and concludes claimant sustained personal injury by accident arising out of and in the course of employment with respondent on or about August 10, 2001.

Claimant testified that on August 10, 2001, he felt a tearing sensation in his neck and shoulders while lifting and pulling molded plastic parts from a molding machine. According to claimant, on that date the machine was not functioning properly, which required claimant to repeatedly bend over and pull the parts from the machine. Claimant immediately reported the incident to a supervisor, who completed an accident report.

Claimant was referred to medical care and on August 14, 2001, saw Dr. Greg Faimon. The doctor found palpable tenderness and a positive impingement sign in the left shoulder and diagnosed left rotator cuff strain. Dr. Faimon's office notes contain the following history:

Workmans' comp for KSQ. Left shoulder pain after pulling and lifting a part. Injury took place on 8/13/01. The patient denies numbness or tingling. He has increased pain when lifting above his shoulder. He is taking no medications.

On September 4, 2001, claimant saw Dr. John M. Winblad for treatment. At that time, claimant was continuing to have symptoms in his neck and shoulder areas. The doctor noted claimant had left neck pain, left upper back and parascapular pain, and bilateral shoulder pain with evidence of inflammation and tendinitis. The doctor also noted claimant had good range of motion in his neck and shoulders.

Respondent and its insurance carrier contend claimant has failed to prove he injured himself at work. Instead, they argue it is more likely claimant injured himself in activities off the job, such as mowing lawns, delivering newspapers and cleaning debris from his yard following a February 2002 ice storm. Respondent and its insurance carrier introduced into evidence a videotape which, among other things, showed claimant using a chain saw and clearing the debris in his yard after that February 2002 storm.

Eventually claimant was referred to orthopedic surgeon Dr. Robert L. Eyster for treatment. Dr. Eyster found that claimant had impingement signs in his shoulders and recommended a left shoulder diagnostic arthroscopy and possible decompression. The doctor was asked whether claimant's need for treatment was caused by the August 2001 work-related incident or claimant's activities depicted in the videotape. In a February 22, 2002 letter to respondent, the doctor stated that it was possible claimant could use a chain saw and toss the debris from the downed tree limbs as depicted in the videotape without aggravating his injuries. The doctor wrote, in part:

There is some evidence on occasion where even though we cannot know the exact weight that was being lifting [sic] it seems to be in excess to the weight restriction. He certainly seems to use the shoulders repetitively using a saw and throwing wood. The activities that actually aggravate shoulders that are more problematic would be if he were throwing the wood overhead that I did not see on the video.

The level at which he is throwing the wood and using the saw is possible with the problem that he has without significant potential of aggravation. . . .
(Emphasis added.)

When considering the entire record, including claimant's testimony about the activities that he performed when off work and the uncertainty of Dr. Daniel J. Prohaska regarding the cause of claimant's injuries, the Board concludes claimant has proven that he sustained a work-related injury. Accordingly, the Board affirms the Judge's finding that claimant injured his left shoulder on August 10, 2001, while working for respondent and that he is entitled to receive medical treatment for that accidental injury.

WHEREFORE, the Board affirms the July 9, 2002 Order entered by Judge Clark.

IT IS SO ORDERED.

Dated this ____ day of September 2002.

BOARD MEMBER

c: Lee E. Velasquez, Attorney for Claimant
D. Steven Marsh, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Director, Division of Workers Compensation